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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/063,125 | 03/22/2002 | Lex P. Jansen | S63.2-10399 | 5949 |

490 7590 05/08/2007
VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
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MINNETONKA, MN 55343-9185

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| EXAMINER |
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DAWSON, GLENN K

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| ART UNIT | PAPER NUMBER |
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3731

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05/08/2007

PAPER

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| APPLICATION NO./ CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR / PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
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Commissioner for Patents

Please see the attached Examiner's Answer.


Glenn K Dawson
Primary Examiner
Art Unit: 3731



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/063,125
Filing Date: March 22, 2002
Appellant(s): JANSEN ET AL.

MAILED
MAY 08 2007
GROUP 3700

Sean Daley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01-03-2007 appealing from the Office action mailed 09-21-2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|---------|----------|---------|
| 5443498 | Fontaine | 08-1995 |
| 5628787 | Mayer | 05-1997 |

| | | |
|------------|-------|---------|
| 5226909 | Evans | 07-1993 |
| WO95/30384 | Mayer | 11-1995 |

Rhenium and Molybdenum/tungsten based on alloys: an overview of database; Boris Bryskin, Jan Carlen; [www://rhenium.com/materials/WRE/tungsten.html](http://www.rhenium.com/materials/WRE/tungsten.html)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

See the Final Rejection for the grounds of rejection and previous answers to applicant's arguments.

(10) Response to Argument

Applicant's arguments are essentially the same as prior to and after the Final rejection. The examiner has already addressed the arguments and will only touch on the main points again here.

The base reference discloses a stent with a radiopaque body; however, the specifically claimed materials in the claimed weight percentages is not disclosed. The teaching references disclose various other medical instruments using radiopaque materials which can be a tungsten/rhenium alloy. Applicant argues that the prior art is insufficient to establish the obviousness of using the claimed materials in the claimed weight percentages as the prior art does not disclose that this alloy is both radiopaque and compatible with MRI's and one would not have expected the prior art tungsten/rhenium alloy to be useable for manufacturing stents.

The examiner counters this argument by reiterating that on a base level, it would have been obvious to have substituted other known radiopaque materials for the one in the base reference. The teaching references were presented to establish that the claimed material was known at the time of the invention to be radiopaque. This fact is not in dispute. The applicant contends that none of the references would support the notion that this material would also be MRI compatible or have the other characteristics that a stent material must have. The examiner states that Bryskin teaches that the W-Re alloys are attractive for x-ray targets and have suitable properties for forming medical devices. There is nothing in the claims with respect to the material needing to be radiopaque and MRI compatible. The motivation for using the particular materials need not be for the same exact reason as the applicant. That is to say that the reason for using the Tungsten/rhenium alloy need not be for MRI compatibility at all. The motivation for using the specific alloy is one which provides a stent with good radiopaque qualities. Applicant states that there would not be a reasonable expectation of success that this material could be used to manufacture a stent. However, Mayer-'WO95/30384, a patent cited by applicant, clearly discloses that a tungsten/rhenium alloy having the claimed composition weight percentages was used to construct a stent with this material being highly absorptive of x-rays and radiopaque- see page 8 line 7 and page 16 lines 13-15. Therefore, applicant was well aware that this material was known to have been used to construct stents. This reference is merely cited here to rebut applicant's contention that the materials' use would not have been known to necessarily be successful in a stent. The examiner contends that substituting one known radiopaque

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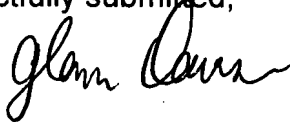
material (tungsten/rhenium alloy) for the tantalum of Fontaine to be an obvious exchange or known alternative materials. The teaching references have sufficient disclosure to support that this material would have been expected to successfully manufacture a radiopaque stent.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



GLENN K. DAWSON
PRIMARY EXAMINER

Glenn K. Dawson

Conferees:
